



UNIVERSITY of VIRGINIA

OFFICE OF THE VICE PRESIDENT
FOR RESEARCH AND GRADUATE STUDIES

October 12, 2005

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
OUSD (AT&L) DPAP (DAR)
IMD 3C132
30621 Defense Pentagon
Washington, D.C. 20301-0350

Dear Ms. Williams:

This letter provides comments on the proposal to amend the Defense Federal Acquisition Regulation Supplement (DFARS) published in the Federal Register on July 12, 2005 (DFARS Case 2004—D010). As a member of the American Association of Universities and the Council on Governmental Relations, the University of Virginia supports the letters of comment submitted by both organizations.

Given that responses to the recent proposed export control changes by the Department of Commerce were only recently submitted, it would seem sensible to defer any further individual agency action until the results of Commerce's deliberations have been issued. At the very least, we suggest that the DOD coordinate its proposal with any conclusions coming out of the consultation period with Commerce so as not to risk the establishment of conflicting processes and regulations.

The University of Virginia is committed to protecting National Security interests and is diligent in applying current understanding of U.S. government policy as expressed in the National Security Decision Directive (NSDD) 189 that states that classification is the only appropriate mechanism for government control of fundamental research information. This policy has for many years protected concerns about the small portion of U.S. academic research that is likely to pose a real security risk for the nation.


Of particular concern is that the proposed amendment fails to recognize exemptions for basic research. Fundamental research, as a part of the University of Virginia's commitment to academic freedom, cannot be easily undertaken without good faith collaboration between researchers, including colleagues visiting each others' laboratories, last minute participation in projects which use specialized scientific equipment, and the use and demonstration of equipment. Research necessarily involves the pursuit of intellectual paths whose outcomes are uncertain and unpredictable, and this principle applies equally to the use of equipment and other related technologies. The exemption of fundamental research from the strictures of export controls should rightly allow researchers and technicians free access to equipment that might otherwise be controlled, and this exemption should further allow the ability to alter existing equipment where

also be made for the creation of new equipment and for the free sharing of such information with other members of the academic community. Such activities are part and parcel of the innovative nature of research. This open, spontaneous and collaborative spirit is at the foundation of the success of the U.S. academic research endeavor. As written, we are concerned that that this proposal would eliminate the fundamental research exemption and this would have a chilling effect on scientific research enterprise.

With regard to the access control of foreign nationals to U.S. university research and education, we do not understand the need for further restrictions on an individual's ability to participate in the conduct of fundamental, unclassified research. Not only would this present a significant logistical challenge and cost to major research institutions, it would also impinge on the academic and intellectual freedom long enjoyed by scientists and other researchers under the terms of the Fundamental Research Exemption. We understand that the current visa process is intended to screen foreign nationals and to assess their threat to national security before approving their entry into the country for purposes of pursuing a particular course of study. Visa applications are reviewed by federal agencies, including the Departments of State, Homeland Security, and other concerned agencies. If, after appropriate screening, a foreign student or researcher is deemed by the government to be suitable and eligible for entry into the United States under the auspices of a visa that allows study and research at a U.S. institution of higher education, that person should then be allowed to participate fully and freely in the work of that university's academic and fundamental, unclassified research communities.

The University of Virginia is committed to ensuring compliance with export control laws and preserving national security. The proposed changes would clearly place a heavy burden on our institution and would dramatically change the way the University pursues fundamental, unclassified, research.

Sincerely,



R. Ariel Gomez, M.D.
Professor of Biology and Pediatrics
Vice President for Research and Graduate Studies

Cc: John T. Casteen, III, President
Leonard Sandridge, VP and Chief Operating Officer
Gene Block, Provost
Marilyn A. Berry Thompson, JordenBurt